IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16/07/2004

Coram

The Honourable Mr. B. SUBHASHAN REDDY, Chief Justice
and
The Honourable Mrs. Justice PRABHA SRIDEVAN

W.P.M.P.No. 24116 of 2004
and WPMP.Nos. 24121, 24122, 24715, 24960, 24749 & 24750 of 2004
in
W.P.Nos. 20038, 20042, 20043, 20529 & 20725 of 2004

W.P.M.P.No. 24116 of 2004

V.Subramanian
Advocate, High Court, Madras
MHAA I Floor,
High Court, Chennai - 600 104. .. Petitioner

-Vs-

1. Union of India
rep. by its Secretary to
Ministry of Law & Justice,
Department of Justice, New Delhi - 110 001.

2. The Registrar General
High Court of Madras,
Chennai - 600 104.

3. K. Sultan Allowdhin
Executive President
All India Lawyer's Union,
Madurai District Committee,
66, Law Chambers, Madurai District
Court Complex, Madurai - 625 020.

4. Madurai Bar Association represented
by its Secretary A.K.Ramasamy .. Respondents

W.P.M.P.No.24121 of 2004

Y. Deva Arul Prakash
Advocate, High Court, Madras
MHAA, I Floor,
High Court, Chennai - 600 104. .. Petitioner

Vs.
1. Union of India
rep. by its Secretary to
Ministry of Law & Justice,
Department of Justice,
New Delhi - 110 001.

2. The Registrar General
High Court of Madras,
Chennai - 600 104. .. Respondents

W.P.M.P.No. 24122 of 2004

V. Chandrasekaran
S/o. Venkataraman
46/2, 3rd Street,
Abiramapuram, Chennai - 18. .. Petitioner

Vs.
1. Union of India
rep. by Ministry of Law Justice
& Company Affairs,
New Delhi.

2. The Registrar General
High Court of Judicature at Madras,
Chennai - 600 104. .. Respondents

W.P.M.P.No. 24715 of 2004

D. Selvam
S/o. Dirvianathan
Sakkilangulam,
Valandur Village,
Usilampatty Taluk,
Madurai District. .. Petitioner
Vs.

1. Union of India
rep. by its Secretary to
Ministry of Law & Justice,
Department of Justice,
New Delhi - 110 001.

2. The Registrar General
High Court of Judicature at Madras,
Chennai - 600 104. .. Respondents

W.P.M.P.No. 24960 of 2004

N. Senthilvelan
S/o. Murugesan
18, Butter Worth Road,
Trichy - 620 002. .. Petitioner

Vs.

1. Union of India
rep. by its Secretary to
Ministry of Law & Justice,
Department of Justice,
New Delhi - 110 001.

2. The Registrar General
High Court of Madras,
Chennai - 600 104. .. Respondents

!For Petitioner in W.P.M.P.No.
24116 of 2004 .. Mr.N.G.R.Prasad
for M/s.J.Pothiraj &
S.Karolin Geetha

For Petitioner in W.P.M.P.No.
24121 of 2004 .. Mr.G.Rajagopalan
Senior Counsel
for M/s.J.Pothiraj &
S.Karolin Geetha

For Petitioner in W.P.M.P.No.
24122 of 2004 .. Mr.T.R.Rajagopalan
Senior Counsel
for M/s.J.Pothiraj &
S.Karolin Geetha

For Petitioner in W.P.M.P.No.
24715 of 2004 .. Mr.S.R.Rajagopal

For Petitioner in W.P.M.P.No.
24960 of 2004 .. Mr.B.Kumarasamy

^For 1st Respondent in all the
Petitions .. Mr.V.T.Gopalan
Additional Solicitor General
of India
assisted by Mr.P.Wilson
.. Mr.R.Muthukumarasamy
Addl.Advocate General

For Third respondent in

W.P.M.P.No.24749 of 2004 .. Ms.R.Vaigai
for M/s.K.Elango &
G.Chamki Raj.

For Fourth respondent in
W.P.M.P.No. 24750 of 2004 .. Mr.K.Chandru,
Senior Counsel
For Mr.R.Yashod Vardhan

:O R D E R

The Honourable The Chief Justice

These Writ Petitions have been filed pro bono publico challenging the Presidential Order titled 'Madras High Court (Establishment of a Permanent Bench at Madurai) Order 2004' issued in exercise of the powers conferred by sub-Section (2) of Section 51 of the States Reorganisation Act, 1956. The above Act hereinafter is referred to as the 'SR Act' and the Presidential Order as the 'Order'.

2. The dispute relates to setting up of a Bench of Madras High Court at Madurai. There had been a long standing demand for setting up High Court Bench at Madurai. In fact, the demand was first made by a resolution of Kanniyakumari Bar Association wayback in the year 1965. After series of resolutions so passed by one Bar Association or the other, as also the demands made by others, the matter was referred to Justice Jaswant Singh Commission during the year 1983. 3. On 30.8.1985, Jaswant Singh Commission submitted its report favouring a Circuit Bench at Madurai consisting of seven districts viz., Kanyakumari, Madurai, Tirunelveli, Pudukkottai, Thanjavur, Ramanathapuram and Tiruchi and recommending that all the cases arising from the said districts be filed and heard by a High Court Bench at Madurai. But thrice, the said proposal was rejected by Madras High Court. The matter did not end there. It was further pursued and then on 31.3.19 95, a 3 Judge Committee was constituted to go into this aspect of Jaswant Singh Commission's report and the said Committee on 18.4.1995 had passed a Resolution to the effect that legal provisions contained in Clause 31 of Letters Patent alone empowered the constitution of a Circuit Bench at Madurai and only civil and criminal jurisdictions can be conferred on the said Circuit Bench. This report was accepted by the Full Court of the Madras High Court by its resolution dated 31.8 .1995. This was communicated to the State Government and the State Government issued G.O. Ms.398, Home (Courts.VII) Department, dated 10.3.1998 accepting the same and seeking to acquire the land at Ulaganeri, Madurai and also sanctioning the requisite amount for the construction of building and for providing infrastructural facilities. Thereafter, the Central Government considered as to whether SR Act can be invoked or not for constituting the Madurai Bench and had opined that SR Act can be invoked and approval was given by the then Union Law Minister on 14.8.1998 for establishment of Permanent Bench of Madras High Court at

Madurai. By Letter D.O. No.K-11018/5/98-US-I, dated 31.12.1999, the succeeding Union Law Minister opined that after a long time of 14 years, instead of constituting a Circuit Bench at Madurai, a Permanent Bench itself can be set up. That was accepted by the then Chief Minister of Tamil Nadu and consequently, the then Chief Justice of Madras High Court, by constituting a 7 Judge Committee, recommended for the constitution of a Permanent Bench. On 13.4.2000, foundation stone has been laid by the then Chief Justice of India. The building has been constructed by providing infrastructural facilities. But when the notification was to be issued, the Central Government again opined that a Parliamentary Act has to be enacted for setting up a Bench and to that effect, a phonographic message was sent to the State Government 0n 30.8.2002 which, in turn, was communicated to the High Court by D.O. Letter No.90169, dated 6.9.2002. A Committee of 3 Judges was set up to monitor the progress of the construction of Madurai Bench building as also the infrastructural facilities, which include the residential quarters for the Judges manning the Madurai Bench. The Committee in its last report dated 13.1.2004 opined that the construction of the building with infrastructural facilities would be complete by 31.3.2004. Accordingly, 13.4.2004 was fixed as the date for inauguration of Madurai Bench. However, by that time, it was not completed. In the meanwhile, the Central Government has sought for the information by a telegram on 1.4.2004 followed by a letter dated 12.4.2004 seeking information with regard to the infrastructural facilities including the Presiding Judges. It is pertinent to mention that in the resolutions of the Full Court of Madras High Court, emphasis was laid for providing one third of the strength for Madurai Bench and the one third of the sanctioned strength of 42 Judges comes to 14 . As such, even while the Union Law Ministry has sanctioned 5 to 7 Judges to man the Madurai Bench by way of an additional strength and asking the Chief Justice to address a letter to the Chief Minister of Tamil Nadu for financial sanction, the Chief Justice, in accordance with the earlier resolutions and also taking into account the workload, sought for the sanction of 14 Judges. But the Chief Minister of Tamil Nadu has sanctioned for 7 Judges reserving option to consider for further increase in the Judge strength after setting up and stabilization of Madurai Bench. Meanwhile, on 12.1.2004, the Chief Justice of Madras High Court had recommended for appointment of 9 Judges which, it is said, is in the process. Now, there is a working strength of 29 Judges. 4. At this juncture, we need to mention about the previous round of litigations in W.P. Nos.2402 and 3333 of 2002. By that time, there was no notification issued. The Governmental Orders as also the Resolution dated 24.1.2004 passed by this Court could be the only basis for those writ petitions. The prayer in W.P. No.2402 of 2002 was to declare the whole process of establishment of a Permanent Bench of the Madras High Court at Madurai to be unconstitutional and illegal, while in W.P. No.3333 of 2002, the prayer was to declare that the decision of Madras High Court seeking to constitute Madurai Bench under Clause 31 of Letters Patent as illegal, void and unconstitutional. W.A. No.926 of 2002 was preferred against the order in W.P. No.3333 of 200 2. The said Writ Appeal was dismissed by a Division Bench of this Court by judgment dated 11.3.2004. The judgment in Writ Appeal was appealed against in the Supreme Court in SLP (Civil) No.6120 of 2004. The Special Leave Petition was dismissed by the Supreme Court by order dated 5.4.2004. We feel it apt to extract the same.

"Considering the fact that (a) the Resolutions had been passed as far back as in 1995 and thereafter in 2000; (b) subsequent thereto land has been acquired and construction work already started, we see no reason to interfere at this stage. The Special Leave Petition is dismissed.

We, however, clarify that this dismissal will not preclude the petitioner from challenging the Bill or Notification for establishment of the Bench if in law, he is entitled to do so" 5. On 24.4.2004, the Chief Justice of Madras High Court addressed a letter to the Union Law Minister that the Madurai Bench building is complete with infrastructural facilities and 7 Judges would be allotted to preside over the Courts there and requested to take the necessary legal steps in that regard. The result is the issuance of the Presidential Order which reads, "THE MADRAS HIGH COURT (ESTABLISHMENT OF A PERMANENT BENCH AT MADURAI) ORDER, 2004.

In exercise of the powers conferred by sub-Section (2) of Section 51 of the States Reorganisation Act, 1956 (37 of 1956), the President, after consultation with the Governor of Tamil Nadu and the Chief Justice of the Madras High Court, is pleased to make the following Order, namely :-

1. Short title and commencement :

(1) This Order may be called the Madras High Court (Establishment of a Permanent Bench at Madurai) Order, 2004

(2) It shall come into force on 24.7.2004.

2. Establishment of a permanent bench of the Madras High Court at Madurai :-

There shall be established a permanent bench of the Madras High Court at Madurai and such Judges of the Madras High Court, being not less than five in number, as the Chief Justice of that High Court may, from time to time nominate, shall sit at Madurai in order to exercise the jurisdiction and powers for the time being vested in that High Court in respect of cases arising in the districts of Kanyakumari, Tirunelveli, Tuticorin, Madurai, Dindugal, Ramanathapuram, Virudhunagar, Sivaganga, Pudukkottai, Thanjavur, Nagapattinam, Tiruchirapalli, Perambalur and Karur in the State of Tamil Nadu:

Provided that the Chief Justice of that High Court may, in his discretion, order that any case or class of cases arising in any such district shall be heard at Chennai."

6. The Bar Associations across the State of Tamil Nadu virtually divided into two, one pleading for retaining only one High Court Bench, i.e. present one and not to split the same while the other pleading the immediate enforcement of the Presidential Order, which results in two High Court benches. Inauguration is set on 24.7.2004 and in fact that is the date set in

the Presidential Order. The Bar Associations pleaded the intervention of the Chief Justice of India at whose instance a Committee was set up by the Chief Justice of Madras High Court. The Committee heard the advocates on two dates, 7.7.2004 and 14.7 .2004. It would take some time for the Committee to go into the details and arrive at a decision. Meanwhile, the instant writ petitions have been filed questioning the constitutionality of the Presidential Order.

7.It is pertinent to mention that in the deliberations held with the Bar Associations on 7th and 14th of this month, the Bar Associations of Nagapattinam and Perambalur Judicial Districts have expressed their unanimous choice to remain with the Principal Bench of Madras High Court and there had been no objection from any quarter for such expression of views.

8. Mr. T.R. Rajagopal and Mr. G. Rajagopalan, learned senior counsel, and Mr.N.G.R. Prasad, Mr. B. Kumarasamy and Mr. S.R. Rajagopal, learned counsel, appeared for the petitioners raising several contentions viz., i. that there can be only one High Court for the State under the Constitution;

ii. that even if a Bench is to be constituted, it can be only by resorting to a Parliamentary enactment traceable to Entries 78 and 79 of List 1 of Schedule 7 of Constitution and not otherwise;

iii. Section 51 of the State Reorganisation Act, 1956 (SR Act) is not applicable to Madras High Court;

iv. even if a Bench at Madurai is to be constituted away from the principal seat at Chennai, the same can be traceable only to Clause 31 of Letters Patent and not to any other legal provision (Mr. S.R. Rajagopal, learned counsel appearing for the petitioner in W.P.M.P. No.24 960 of 2004, not concurring); and

v. Clause 31 of Letters Patent also cannot be invoked as there is no law regulating the Circuit Bench to be set up at Madurai even if the Circuit Bench is set up at Madurai (argument advanced by Mr. S.R. Rajagopal, learned counsel appearing for the petitioner in W.P.M.P. No.2 4960 of 2004).

9. Countering the above submissions, Mr. V.T. Gopalan, learned Additional Solicitor General of India appearing for the Union of India, Mr. R. Muthukumaraswamy, Additional Advocate General appearing for the State of Tamil Nadu, Mr. K. Chandru, learned senior counsel appearing for the fourth respondent in W.P.M.P. No. 24750 of 2004 and Ms. R. Vaigai, learned counsel appearing for the third respondent in W.P.M.P. No.24749 of 2004, contended that (i) the petitioners have got no locus standi; (ii) that the writ petitions are hit by principles of constructive res judicata;

(iii) that Madras High Court is also governed by Section 51 of the SR Act; and

(iv) that in any event, the writ petitions are liable to be dismissed for laches on the part of the petitioners.

10. All the learned counsel, in support of their respective contentions, have taken us through several constitutional provisions, several other statutory provisions and also plethora of precedents. So far as the contentious issues are concerned, they have to be considered in larger perspective comprehensively and that is not possible in interlocutory applications and it is not desirable too as the interlocutory applications, particularly like the instant one, are decided basing upon the balance of convenience. While it can be conveniently argued for the petitioners that the inauguration of Madurai Bench can be put off by some more time pending disposal of the writ petitions, the question is how long the event of inauguration of Madurai Bench has to wait. No argument can be countenanced that Madurai Bench has to wait eternally for its inauguration with no end at the sight. There has been a long wait, not of months or years but of decades, and ultimately, a vast extent of land has been acquired, foundation stone has been laid four years back and crores of rupees have been spent for completion of massive building with provision of infrastructural facilities. One leading newspaper has aptly described that 'bride is waiting for wedding' and the wedding, scheduled on 24th of this month, has to take place and will take place. By this, no argument can be raised for the petitioners that the writ petitions will become infructuous, as we have got a plausible solution to the legal problems raised. Nomenclatures such as 'permanent bench' or 'circuit bench' are not the criteria. All that the people in southern parts of Tamil Nadu need is a Bench of the High Court at Madurai. Now, it is too late in a day to rule out the necessity of formation of a High Court Bench at Madurai. So long as the jurisdiction for filing and hearing the case at Madurai Bench is provided, the litigants of southern parts of Tamil Nadu cannot raise any grievance in the context of its nomenclature. The proponents of the retention of exclusive jurisdiction for Madras High Court cannot have any grievance if a Bench is constituted at Madurai earmarking the jurisdiction of some districts. This power of formation of Bench at Madurai, even if it is not traced to the provisions of SR Act, can always be traced to the powers under Clause 31 of Letters Patent. We cannot accede to the contention of Mr. S.R. Rajagopal, learned counsel for the petitioner in W.P.M.P. No.24715 of 20 04 that there should be a further law to regulate the proceedings of a circuit bench under Clause 31 of Letters Patent. The decision in STATE OF MAHARASHTRA v. NARAYAN (AIR 1983 SC 46) is a complete answer to negative the contention of the learned counsel as the proposition laid down by the Supreme Court in that case is that such a power exists in the Chartered High Courts of Calcutta, Madras and Bombay. The words, 'proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India' occurring in the second limb of Clause 31 of Letters Patent have to be construed that even though such Bench is a constituent of the Principal Bench and if there is a variance in laws at Principal Bench and at the constituent Bench or Benches, the relevant laws indicated by the competent legislature operative in the places of jurisdiction of the constituent Bench or Benches shall have to be administered. The very Clause 31 of Letters Patent has been incorporated in Letters Patent enabling the High Court to set up a Bench for sitting at places other than the principal seat for convenience in the administration of justice and that itself is a law and it need not have any other legislative enactment for setting up a Bench. As such, we hold that in the absence of anything

contra, the High Court is well within its powers to set up a Bench at places other than the principal seat by invoking Clause 31 of Letters Patent even if SR Act is not applicable. By setting up a Bench at other places, it cannot be called as a separate High Court as every Bench or Benches, set up at places other than the Principal Seat, are always part of the same High Court and Madurai Bench, after its inauguration, cannot be called as Madurai High Court but will only be called as the Madurai Bench of Madras High Court. If the writ petitions are allowed, then the Presidential Order need not be set aside in entirety. But yet, the Madurai Bench, which is to be inaugurated under the Presidential Order, would not become non est for the reason that it can continue as a Circuit Bench under Clause 31 of Letters Patent as the Presidential Order can always be read down as the one under Clause 31 of Letters Patent. In this connection, it is pertinent to mention about the assent obtained from the President. While Clause 31 of Letters Patent only speaks of the Governor (corresponding to former Governor in Council), analogy can be drawn from Article 200 of Constitution dealing with the assent by the Governor. In our constitutional scheme, while the statutes or orders, requiring the assent of the President, are invalid if not done so, the assent of the President if obtained, even if it is not required, would not make any law bad. In the instant case, there is an assent of the Governor and in turn it has been sent to the President and analogy can be drawn from Article 200 of the Constitution, where the Governor can assent to a Bill, withhold the same and return the same or reserve it for the assent by the President. There is an authoritative pronouncement of the Supreme Court in HOECHST PHARMACEUTICALS LTD v. STATE OF BIHAR (AIR 1983 SC 1019) that even if it is not required under the Constitution, if the Governor sends the bill to the President, the same would not be bad in law. A 3-Judge Bench of the Supreme Court has authoritatively laid down as follows: "89.....There may also be a Bill passed by the State Legislature where there may be a genuine doubt about the applicability of any of the provisions of the Constitution which require the assent of the President to be given to it in order that it may be effective as an Act. In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for consideration of the President to avoid any future complication. Even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper assent. This aspect of the matter as the law now stands, is not open to scrutiny by the courts..."

We hold that even in the event of allowing of the Writ Petitions, the situation with regard to the continuance of Madurai Bench, after its inauguration on 24.7.2004, would not change as it would continue to be a Bench at Madurai with specified areas attached to it even if it is to be termed as one springing from Clause 31 of Letters patent. It is needless to mention that if the writ petitions are dismissed, as a necessary corollary, the Presidential Order stands as it is and operate in full measure, subject of course to such recommendations as may be made by the 9-Judge Committee which went into the rival contentions raised by the respective Bar Associations.

11. In view of what is stated supra, we dispose of these Writ Petition Miscellaneous Petitions as mentioned infra:

(i) the inauguration of Madurai Bench of Madras High Court, scheduled on 24.7.2004 shall go on;

(ii) in the event of allowing of the writ petitions, the Madurai Bench so inaugurated shall continue as a Circuit Bench under Clause 31 of Letters Patent;

(iii) the Judicial Districts of Nagapattinam and Perambalur shall be deleted from Madurai Bench jurisdiction and the first respondent shall take steps accordingly;

(iv) pending the action by the first respondent as directed above, the Madras High Court at its principal seat at Chennai shall have jurisdiction over the Judicial Districts of Nagapattinam and Perambalur also; and

(v) it is needless to mention that in the event of the dismissal of the writ petitions, the Presidential Order stands valid excepting the modifications to be made regarding the deletion of the Judicial Districts of Nagapattinam and Perambalur from the purview of Madurai Bench.

Sm/pv

LR Entry:Yes
Internet:Yes